

The Virginia Indigent Defense Commission
Budget Committee Meeting
1604 Santa Rosa Road, Suite 239
Richmond, Virginia
June 2, 2008

The meeting was called to order at 12:00 pm by chair, Judge Edward Hanson. Other members in attendance were Judge Alan Rosenblatt, Steve Benjamin, and Carmen Williams. Administrative staff included Bonnie Farrish, Executive Director, David Johnson; Deputy Director, DJ Geiger and Diane Pearson.

With four Commission Members in attendance, quorum requirements have been met.

The first item on the agenda is to approve the previous budget committee meeting minutes.

Judge Rosenblatt made a motion to waive the reading of and approve the July 25, 2007 Budget Committee meeting minutes. Mr. Benjamin seconded the motion. The motion carried.

The next item on the agenda is to approve the agenda for today's meeting.

Mr. Benjamin made a motion to approve the agenda. Ms. Williams seconded the motion. The motion carried.

Mr. Johnson reported that there is a document in each folder that has "Salary Increases" as the title which is Section 5.1 of the policies and procedures manual. In looking at the budget language for this year the language states that if an employee in their most recent evaluation has been rated as a contributor, which means meets expectations, it requires that the governing agency certify that. This means that we need to change our evaluation process somewhat.

This process would need to be ready for the September Commission meeting. This also means that if the Public Defender doesn't get the evaluations in on time, their employees will forfeit their raises.

Mr. Johnson stated that he called a special meeting for the Public Defenders in July for training on this.

This is a change to our policies and procedures and allows us to do what the budget language requires us to do. In the past if the employees were relatively new there was no need to have an evaluation done on them, now they need to do an evaluation for everyone, which includes Mr. Johnson doing evaluations for the administrative office and the Commission will need to do an evaluation for Mr. Johnson.

There was discussion regarding this new evaluation process.

Judge Rosenblatt made a motion to recommend to the Full Commission at the June 2008 Commission meeting to adopt the change to §5.1 of the policies and procedures to conform with the requirement of the performance-based Appropriations Act increases which states that employees receiving the proposed salary increases attain evaluation levels of at least "Contributor" which is equivalent to the VIDC performance rating of "Meets Expectations".

Ms. Williams seconded the motion. The motion carried.

Judge Hanson moved that the Budget Committee of the Virginia Indigent Defense Commission convene in closed session to discuss personnel issues pursuant to the personnel exemption contained in §2.2-3711(A)(1) of the Code of Virginia.

This meeting will be attended only by members of the Budget Committee of the Virginia Indigent Defense Commission, however, pursuant to §2.2-37(12)(F) of the Code of Virginia, the Budget Committee of the Virginia Indigent Defense Commission also requests the attendance of the Executive Director and the Deputy Director because it is reasonable to believe that their presence will aid the Budget Committee of the Virginia Indigent Defense Commission in its consideration of the matters which are the subject of the closed session.

The motion was seconded by Judge Rosenblatt. The motion carried.

Judge Rosenblatt made a motion to reconvene into open session as the Budget Committee of the Virginia Indigent Defense Commission. A roll-call vote was taken and each Budget Committee member of the Virginia Indigent Defense Commission was asked to certify that, to the best of his or her knowledge, during closed session the Budget Committee of the Virginia Indigent Defense Commission heard, discussed, or considered only public business matters that were lawfully exempted from open meeting requirements under the Freedom of Information Act.

Mr. Benjamin seconded the motion. The motion carried. Each member so certified.

The next item on the agenda is the proposed 2009 budget. Mr. Johnson thanked Ms. Farrish for all of her work and expressed appreciation for everything she has done.

Ms. Farrish reported that information was solicited from the Public Defenders. Our goal was to match our spending plan to the general fund appropriation. Always a challenge but we were able to accomplish that. Our appropriation is designed to allow us to continue operations at exactly the same level as the past year and also to be sure that instead of partial funding for increases that took effect in the middle of last year, we have full funding this year for those increases. The budget also shows the cost of the November increases from November through the end of the fiscal year. In addition, the appropriation is designed to provide funding for fringe benefits for which the rates have changed between the time the budget was prepared and the beginning of the fiscal year. The appropriations act does not include any additional positions and it does not include start-up costs for anything because there were no new positions. Start-up costs from previous years have been removed. It does not anticipate the use of carryforward funds for any purposes.

There was discussion about carryforward funds and whether we will be getting the money back.

Ms. Farrish said that at this point we have a good argument for getting at least some of the money back because there are obligations for the projects that the Commission has approved and to the extent that we don't receive the invoices in time to pay them; those would be obligations carried forward from this year for which there is no specific funding.

She explained that turnover and vacancy in one year become carryforward in the next. You can spend turnover and vacancy money as you accumulate it whereas with carryforward you have to wait for permission to get it back.

Ms. Farrish continued. There is some non general fund revenue. It is a very small amount which is not included in the budget because it is for two specific purposes, for interns in the Alexandria office and for the Arlington rent. Those two things are not included in this budget.

There was discussion about the Arlington office.

Ms. Farrish said that in the materials everyone has there is detailed information for each cost code which in most cases corresponds to an office. We have broken down the administrative office budget to provide costs for training and enforcement. Enforcement, primarily because of Planning and Budget's move to use of service areas which causes us to give them information broken down in certain ways and for Training, that has been set aside so we can look at those costs and anticipate requests for information based on those costs. We've actually realigned them somewhat this year to make the cost codes line up better with the information we're asked to provide.

There was discussion about the Central Capital Defender office and the position of Special Capital Counsel. Special Legal Resources is the new cost code (710).

Mr. Johnson explained that because of the existence of the capital offices the public defender offices no longer do capital work so there aren't capital-qualified assistant public defenders.

Ms. Farrish continued with unallocated and turnover and vacancy. Turnover and vacancy is the money that we don't spend because the position is vacant temporarily. What we have had in the past is a three percent turnover and vacancy rate that has been budgeted. Because we know we're going to have turnover and vacancy we are able to allocate more money to the offices in personnel than we actually have. We started doing this a long time ago at the recommendation of our budget analyst. One of the things funded from this is the HR manager position that is in the proposed budget.

When we get central appropriations transfers to cover costs of raises and fringe benefits, Planning and Budget looks at our payroll, they multiply that cost by twenty four and they give us the money based on what our cost would be at that time. Mr. Johnson added that if in a typical year we get a three percent raise and we have a \$30 million payroll, we would expect to get \$900,000 to cover that. Instead, they take an individual pay period. We are never at 540 employees. In a given pay period we might have 500 employees, they give us the three percent based on that. But we have to budget as if we have every position filled. A typical good year in the state is a three percent raise; we just received thirteen percent, so the shortfall is four times what it normally would be. Even if we were the best state agency at retaining its people, we would still have about ten to twelve percent turnover.

There was discussion about turnover and vacancy.

Judge Rosenblatt would like a report back to the Budget Committee regarding the new director of budget and finance and that person's responsibility of watching the turnover and vacancy money on a month to month basis.

Ms. Farrish reported that we have had twenty seven people resign between March 5th and the middle of May. These are across all position levels.

Ms. Geiger added that the turnover and vacancy rate from FY07 to FY08 was down as of the middle of May.

Mr. Johnson said that we are recovering from what happened a couple years ago when we lost half of the attorneys in the system in about an eighteen month period. We have now regrouped, the raises have helped. Over half of the employees in our system have been with us less than two years.

There was discussion about the changes that have occurred in the agency in the past couple years. We now have training and standards and other things that elevate this system and it's being made into a professional organization.

Ms. Williams suggested changing the image of public defenders. Some communities think that public defenders aren't good lawyers, which isn't true and that image needs to be changed. Ms. Geiger said that we have received positive input from clients who are happy with their public defenders, but we need more of that.

Ms. Farrish continued with the expenditures category. This category is set out by the Department of Planning and Budget.

She explained that Seat Management is no longer a category. Seat Management was a program wherein the company provides a computer and software and resources for an employee. We all have new computers and Seat Management no longer exists. Ms. Geiger added that all of the computers will have warranties and replacement cycles will be developed.

Ms. Farrish said that we have the new proposed HR manager position budgeted in the administrative cost code with a proposed hire date of October 10th. Under the Personnel category, salaries reflect the full cost of the November 25th, 2007 increase and the projected cost of the two percent increase that is currently slated for November 2008. She explained that by full cost she means a full year's cost for each position plus the fringe benefits, assuming full employment. We have no way of knowing or to project which office will have high turnover and vacancy in a given year. If we try to project it by office we would penalize those offices that manage to keep their employees.

Mr. Johnson added that the Winchester office is now at full staff.

Ms. Farrish said with the salaries, this includes money to raise the entry level salaries by two percent on the same date that the raises are effective.

Mr. Johnson added that this is really important. One of the ways that we fell so far off the map is we would raise the salary for the current employees but entry level stayed where it was. We are dedicated to moving entry levels.

Ms. Farrish added that because Planning and Budget doesn't give us the money to increase entry levels it feeds into the turnover and vacancy budget.

Because the November 25, 2008 salary increase is not included in our agency appropriation at this time we will get funding for that later. That total cost is offset by a negative figure in the unallocated column. She put it in the office budget so the public defenders can plan for that so we don't have to change the budget later, but that does result in the negative figure in the unallocated column.

The fringe benefits are budgeted for each office at the current cost and for some reason, every year between the time we do budget proposals and the time the General Assembly approves the budget and July 1st when the fringe benefit rates go into effect, they are never the same. That means that early in the year we will receive additional funds for some fringe benefits because for instance, health care being

the primary example, they will have gone up in cost and other fringe benefits are actually going to be paid at lower percentage rates than they were budgeted so we will have to give money back. Those account for additional negatives and positives in the unallocated column because the office budgets reflect the rate that is in effect July 1st.

There is a column for pay practice accounts and as part of the effort to make all of these numbers balance it was reduced to \$300,000 plus the related fringe benefits.

Mr. Johnson said that the public defenders were expecting to lose \$200,000 out of that because of the money we gave back at the end of the year. Pay Practice is still frozen at this point. Pay Practice is complicated.

There was discussion about Pay Practice.

Judge Hanson suggested coming up with a proposal and presenting it to the Commission at the September meeting sufficiently amending the Pay Practice program and using it as a retention program. Mr. Johnson said it was a great idea; however, the new budget person would need to be involved in this.

Ms. Geiger suggested that the policies and procedures workgroup will meet in September and it could be brought up to them. She said there are public defenders in the workgroup.

Mr. Johnson added that he would put this on the agenda for the Public Defender meeting in July.

The next item is operating expenses.

Ms. Farrish reported that she got very detailed input from some of the public defenders and wherever possible we adopted their recommendations and built those into the budget. We were required; however, because of the gap between appropriation and what we needed to budget for the office, to cut some areas. We were very careful about what we chose and tried to make sure that what we were doing brings them closer to their actual expenses without leaving them short of money. We looked at telephone expenses where we really were able to look at their track record during the course of the current fiscal year and discovered that quite a few offices had far more money budgeted for phone than they were ever going to use. So we cut some there. This is just for telephone service, not maintenance.

Publications and subscriptions. Most office budgets included sufficient funds to buy hard copies of everything so we were able to reduce their budgets while still making sure they had enough money for their share of the LexisNexis and Westlaw subscriptions that we now have. We recognize that they will not be buying hard copies of everything at this point. We were able to use that to bring them closer to reality and yet come up with some of the money to make things balance.

One of the other big categories we looked at was travel. We've increased efforts on expanding training programs offered by the Commission and attendance at local and regional conferences as well as efforts to economize through carpooling. We were able to cut travel budgets while still giving the offices the ability to provide training that their employees need.

We also looked at equipment. Over the years things just fall through the cracks. There were very small offices that had huge budgets for office furniture. In some cases I think we forget to pull out start-up costs for positions or something like that and then an office is out of whack.

There were twenty some new positions in the beginning of FY08 so there are no new positions in the appropriations act for FY09.

There was discussion regarding offices that have state cars. The offices that have cars are offices that do a lot of traveling or are in remote areas. Rental cars are now another option for travel.

Judge Rosenblatt made a motion to recommend adopting the proposed budget to the Full Commission. Mr. Benjamin seconded the motion. The motion carried.

Judge Hanson moved to adjourn the meeting. Judge Rosenblatt seconded the motion. The motion carried.

The meeting adjourned at 1:25pm.

Respectively Submitted:

Approved By:

Diane Z. Pearson, Administrative Assistant

David J. Johnson, Executive Director